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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with Commission on Human Rights resolution 1995/72 of 8 March 1995, and Economic and Social Council decision 1995/283 of 25 July 1995.

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ANNEX

Interim report prepared by Mr. Yozo Yokota, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, in accordance with Commission on Human Rights resolution 1995/72 of 8 March 1995 and Economic and Social Commission decision 1995/283 of 25 July 1995

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I. INTRODUCTION

1. On 8 March 1995, at its fifty-first session, the Commission on Human Rights adopted without a vote resolution 1995/72 entitled "Situation of human rights in Myanmar". In paragraph 23 of the resolution, the Commission decided to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers and requested the Special Rapporteur to report to the General Assembly at its fiftieth session and to the Commission on Human Rights at its fifty-second session. The present report, which constitutes a preliminary report by the Special Rapporteur, is being presented in accordance with that request. A final report will be submitted to the Commission on Human Rights at its fifty-second session.

2. In the same resolution, the Commission, inter alia: noted with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 had not yet reached its conclusion; deplored the fact that political leaders remained deprived of their liberty, in particular elected representatives and Nobel Peace Prize laureate Daw Aung San Suu Kyi; expressed its grave concern at the violations of human rights, which remained extremely serious, in particular, the practice of torture, summary and arbitrary executions, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detention, forced displacement, important restrictions on the freedoms of expression and association, and the imposition of oppressive measures directed at ethnic and religious minority groups; and expressed its concern about the continuous problems created in neighbouring countries by the continuous flows of refugees from Myanmar. The Commission also expressed its grave concern over the offensive against the Karen National Union, Burmese student activists and other groups of the political opposition.

3. In addition to the above, the Commission took note of the fact that the Government of Myanmar: had acceded to the Geneva Conventions of 12 August 1949; had withdrawn several reservations it had entered concerning the Convention on the Rights of the Child; had observed cease-fire agreements with ethnic groups; had freed a certain number of political prisoners; and had received the Special Rapporteur for a visit to Myanmar.

4. On 25 July 1995, the Economic and Social Council, in its decision 1995/283, approved Commission resolution 1995/72.

5. The present preliminary report is submitted to the Secretary-General of the United Nations for dissemination to all States Members of the United Nations.

II. PROPOSED VISITS TO MYANMAR BY THE SPECIAL RAPPORTEUR

6. On 19 July 1995, following the lifting of restrictions against Daw Aung San Suu Kyi, the Special Rapporteur addressed the following letter to

the Government of Myanmar requesting a visit to the country in order to meet with her:

"I have the honour to refer to Commission on Human Rights resolution 1995/72 of 8 March 1995, by which my mandate as Special Rapporteur on the situation of human rights in Myanmar was extended for a fourth year.

"By paragraph 23 of resolution 1995/72, the Commission called upon the Special Rapporteur 'to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty'. Paragraph 25 urged 'the Government of Myanmar to cooperate fully and unreservedly with the Commission and the Special Rapporteur and, to that end, to ensure that the Special Rapporteur effectively has free access to any person in Myanmar whom he may deem appropriate to meet in the performance of his mandate, including Daw Aung San Suu Kyi'.

"Accordingly, I would be most grateful to continue benefitting from the cooperation of your Excellency's Government so that I may provide the General Assembly and the Commission with an accurate and comprehensive assessment of the situation of economic, social, cultural, civil and political rights in Myanmar. In this regard, and given the recent decision of your Government to lift the restrictions placed on Ms. Aung San Suu Kyi, I would wish to visit your country to meet with her. On the same occasion, I would welcome the opportunity to have discussions with your Government's representatives. This exceptional mission will enhance the accuracy of my report to the General Assembly, in which all the recent developments could be reflected. Specifically, and keeping in mind the schedule of the General Assembly, I would hope that your Government would agree to my visit from 21 to 25 August.

"I wish to note in this connection that it would remain my intention to visit Myanmar for a lengthier period in October 1995 as I have done in each of the past few years. I will address this matter in greater detail in a future letter.

"Hoping that this would be acceptable to your Excellency's Government, let me also restate my commitment to accord full consideration of your Government's views and that, as such, I am at your entire disposal to continue our dialogue about the situation of human rights in Myanmar."

7. On 11 August 1995, the Special Rapporteur received a letter from the Permanent Representative of Myanmar to the United Nations Office at Geneva, in which he communicated his Government's reservation to such a visit:

"I have the honour to refer to your letter of 19 July 1995, addressed to His Excellency the Minister for Foreign Affairs of the Union of Myanmar, expressing your desire to visit Myanmar from 21 to 25 August 1995 in accordance with the provisions contained in resolution 1995/72 of the Commission on Human Rights.

"In this connection, I would like to inform you that the authorities concerned in Yangon have responded that it would be appropriate for you to

journey to Myanmar at a later date as had been the case on previous occasions.

"I trust that you understand and plan to undertake your trip to Myanmar at a later date this year as originally proposed by you."

8. On 14 August 1995, the Special Rapporteur addressed the following letter to the Government of Myanmar, in which he reiterated his wish to undertake a short visit to the Union of Myanmar in the course of August:

"I have the honour to refer to a letter addressed to me on 11 August 1995 by your Permanent Representative in Geneva, Ambassador U Aye, by which you communicated your Government's reservation of my proposal to visit the Union of Myanmar between 21 and 25 August 1995. As Special Rapporteur on the situation of human rights in Myanmar, I would like to bring your Government's attention on the necessity for me to visit the Union of Myanmar during these specific dates.

"In the performance of my mandate, I have always endeavoured to establish direct contact with the Government and people of Myanmar. In this respect, I have never underestimated the importance of my having direct access to sources of information, including your Government's comments, in order to allow me fully and reliably to discharge my mandate in reporting to the States Members of the United Nations concerning the situation of human rights in Myanmar.

"In the past years, my requests to meet with Daw Aung San Suu Kyi were consistently denied, despite decisions of the Commission on Human Rights urging the Myanmar Government to cooperate fully. This year, following your Government's decision to lift the restriction to which Daw Aung San Suu Kyi has been subject since 1989, I believe that it is very important to meet with her as soon as possible to discuss topics pertaining to my mandate. Such a meeting is also expected by the international community and a summary of the discussions would therefore be published in my forthcoming report to the General Assembly.

"In keeping with my commitment to endeavour to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, this visit could also be a unique opportunity for me to receive your Government's responses and explanations to the allegations of human rights violations received by me in the last year. These comments will be brought directly to the attention of the General Assembly during its forthcoming session.

"Keeping in mind the deadline for the submission of my interim report to the General Assembly (September 1995), a visit to Myanmar at the end of August may be the only opportunity to provide the international community with an accurate and comprehensive assessment of the situation of economic, social, cultural, civil and political rights in Myanmar. Indeed, this exceptional mission will strengthen the accuracy and the actuality of my report to the General Assembly.

"In view of the above, I would appreciate the cooperation of your Government in reconsidering the dates proposed by your Government for my visit to Myanmar and to allow me to travel for five days as originally requested, i.e., 21 to 25 August 1995.

"In anticipation of receiving your Government's response to this request at its earliest convenience, and hoping that it may be positively considered, I remain, yours sincerely."

9. On 4 September 1995, observing that no reply was forthcoming regarding the Special Rapporteur's proposal to visit Myanmar in August, the Special Rapporteur addressed another letter to the Government of Myanmar suggesting other dates for his visit:

"I have the honour to refer to Commission on Human Rights resolution 1995/72 of 8 March 1995 by which my mandate as Special Rapporteur on the situation of human rights in Myanmar was extended for a fourth year. As you may be aware, at its most recent session the Economic and Social Council approved Commission resolution 1995/72 by its decision 1995/283 of 25 July 1995.

"In the performance of my mandate, I have always endeavoured to establish direct contact with the Government and people of Myanmar. In this respect, I have never underestimated the importance of my having direct access to sources of information, including your Government's comments, in order to allow me fully and reliably to discharge my mandate in reporting to the States Members of the United Nations concerning the situation of human rights in Myanmar.

"This year, following your Government's decision to lift the restriction to which Daw Aung San Suu Kyi has been subject since 1989, I have requested in a letter addressed to your Government on 19 July 1995 to undertake a short visit in August to meet with her. In a letter addressed to me on 11 August 1995 by your Permanent Representative in Geneva, Ambassador U Aye, you communicated your Government's reservation of my original proposal to visit Myanmar between 21 and 25 August 1995. Instead, your Government expressed its view that it would be more appropriate for me to postpone my visit to a later date.

"Accordingly, I would be most grateful to continue benefitting from the cooperation of your Excellency's Government so that I may provide the Commission and the General Assembly with an accurate and comprehensive assessment of the situation of economic, social, cultural, civil, and political rights in Myanmar in accordance with the provisions contained in Commission on Human Rights resolution 1995/72. In this regard, and in keeping with my commitment to endeavour to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, I would wish to visit again your country. Specifically, and keeping in mind the deadline for the submission of my report to the Commission on Human Rights as well as your Government's suggestion, I would hope that your Government would agree to my visit at

about the same time as it had been the case during my previous visits; may I suggest from 8 to 17 October 1995.

"Hoping that this would be acceptable to your Excellency's Government, let me also restate my commitment to accord full consideration of your Government's views and that, as such, I am at your entire disposal to continue our dialogue about the situation of human rights in Myanmar."

10. On 28 September 1995, in a letter from the Permanent Representative of Myanmar to the United Nations Office at Geneva, the Special Rapporteur was informed that the proposed dates for his visit had been tentatively agreed to.

11. Since the Special Rapporteur intends to visit Myanmar and Thailand in October, it is not feasible to reach conclusions for the present report on the many allegations on violations of human rights that have been reported to him. It is hoped that information gathered during the Special Rapporteur's visit, as well as continued dialogue with the Government of Myanmar, will facilitate conclusions to be included in the Special Rapporteur's comprehensive report to the Commission on Human Rights at its fifty-second session.

III. MEMORANDUM OF ALLEGATIONS TO THE GOVERNMENT OF MYANMAR

12. By a letter dated 5 September 1995 to the Minister for Foreign Affairs of Myanmar, the Special Rapporteur transmitted the following memorandum of allegations received by him of human rights violations reported to have occurred in Myanmar:

"A. Summary or arbitrary execution

"1. As noted in his report to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/37), the Special Rapporteur welcomed the fact that all death sentences had been commuted to life imprisonment. This year the Special Rapporteur received no information of an explicit or systematic government policy encouraging summary killings.

"2. However, there continued to be credible reports of instances of brutality sometimes resulting in the killing of civilians by Myanmar military forces under a variety of circumstances.

"3. In the minority-dominated areas where insurgencies have been taking place, many of the allegedly killed were civilians who were accused of either being insurgents or collaborating with insurgents. The following are examples of allegations received:

"(a) A 25-year-old Mon labourer who escaped from portering reported that, on 8 April 1995, soldiers belonging to Light Infantry Battalion No. 403, while coming from the Three Pagodas Pass, entered the Kayin village of Kamon and shot and killed four Kayin villagers on suspicion of being Kayin soldiers;

"(b) On 3 May 1995, a villager from Bee T'Kaa village was allegedly arrested and subsequently executed by soldiers belonging to Battalion No. 230, under the command of Kyaw Myint Taun, upon accusation of helping the Kayin National Liberation Army.

"4. Other reports from non-governmental sources have described cases of civilians who were allegedly executed when they resisted becoming porters for the army or were beaten to death while being used as porters. Two examples are as follows:

"(a) On 3 November 1994, a 25-year-old man was reportedly shot when fleeing from troops belonging to Infantry Battalion Nos. 62 and 31, under the command of Captain Aye Min, coming to arrest villagers for portering in Kawgo village, Mon state;

"(b) In March-April 1995, two porters, aged about 30 and 50 years respectively, were beaten to death by soldiers belonging to Battalion No. 104 for requesting water after supplies had been cut during a battle near Ka Neh Lay.

"5. The army is also reported to have executed civilians for failure to provide services demanded. These may include labour, food, money or arms. For example, at 8 p.m. on 11 September 1994, Local Infantry Battalion No. 33, Infantry Battalion No. 27, Company 1 (Battalion Commander Chit Thaung, Second-in-Command Zaw Myint and Company 1 Commander Captain Win Tint) reportedly entered Kyaun See village in Mon state and opened fire on villagers running away for fear of being conscripted as porters. Three men (aged 18, 21 and 23 years respectively) were reportedly arrested. At 4 a.m., on 12 September 1994, the 21-year-old man was reportedly stabbed with a knife in the throat. It was reported that the 23-year-old man's nose was cut off, and that he was stabbed in the eyes and both ears. The 18-year-old man's teeth and left arm were broken and the left side of his face was cut with a knife. It was reported that the three men died in custody.

"6. The Special Rapporteur would appreciate receiving information describing any investigations into the above allegations undertaken by the Government. Please detail any steps taken internally by the military or by the civilian authorities, legal or otherwise, to prevent or curtail the occurrence of extra-judicial executions in contravention of article 3 of the Universal Declaration of Human Rights and article 3 common to the Four Geneva Conventions of 12 August 1949. Please indicate whether any military personnel have been tried and sentenced, dismissed from duty or otherwise sanctioned for their part in any verified violations; whether the Code of Criminal Procedure provides for sanctions for theses violations, what remedies it may provide for the relatives of the victims and if any such petitions have been brought and to what effect.

"B. Arbitrary arrest and detention

"7. The Government of Myanmar continued to release political prisoners in 1995, although the exact numbers could not be verified. According to information provided by the Government of Myanmar, 31 detainees were released from various jails on 15 March 1995 as a gesture honouring the Golden Jubilee Armed Forces Day. The Special Rapporteur welcomed this decision and on 24 March 1995 addressed the following letter to the Minister for Foreign Affairs of Myanmar:

> 'In my capacity as Special Rapporteur, I welcome the decision taken by the Myanmar authorities to release, on 15 March 1995, 31 detainees from various centres of detention in Myanmar. I am particularly pleased to note that among these detainees were two prominent political party leaders from the National League for Democracy (NLD), U Kyi Maung and U Tin Oo, whom I met in Insein Prison during my two previous visits to your country in 1993 and 1994.
>
> 'As Special Rapporteur, I believe that the release of these persons is an encouraging step towards national reconciliation and the democratization of Myanmar. In this connection, I trust that their release is without condition. I also hope that this recent decision will be followed in the near future by the unconditional release of all other persons who remain in detention on account of their opinions.'

"8. However, the Special Rapporteur has continued to receive reports from reliable sources indicating that Myanmar citizens (especially political party leaders) continue to be subject to restrictions on their liberty, especially freedoms of expression and association.

"9. According to several reliable sources, on 2 June 1995 the Myanmar authorities again arrested U Kyi Maung, a retired Colonel and leading spokesman for NLD, who had been freed on 15 March 1995 after having been imprisoned for about five years. It is further reported that the Government of Myanmar released U Kyi Maung on condition that he would not become involved in any political activity or not contact journalists or foreign diplomats. It was reported that U Kyi Maung had been placed in detention shortly after he held talks with the British Ambassador to Myanmar. According to information received, U Kyi Maung was arrested with the following persons: U Tun Shwe (a former diplomat), U Thu Wai (former Chairman of the opposition Democracy Party, which no longer exists), Professor Than Hla (former Rector of Yangon University), U Aye Maung (friend of Professor Than Hla), U Chit Tun (former journalist for the Financial Times (London) and United Press International (UPI)) and Ma Theingi (former private secretary to Daw Aung San Suu Kyi). According to information received by the Special Rapporteur, Ma Theingi was released on 3 June, U Chit Tun was released shortly thereafter, and U Kyi Maung and the others were released on 8 June 1995.

"10. In mid-June 1995, U Tun Shwe (a veteran politician), U Thu Wai (former Chairman of the Democracy Party) and U Htwe Myint (Vice-Chairman of the

Democracy Party) were rearrested and taken to Insein Prison where they are said to have been sentenced, during a summary trial, to seven years' imprisonment. All three had served prison terms of various duration in the past for their non-violent political activity. The charges on which they were convicted are not known, but it was reported that the three men met regularly with resident foreigners.

"11. In addition to the above allegations, the Special Rapporteur has received a list of 15 members of parliament (MPs) still detained as of July 1995. They are:

U Ohn Kyaing, MP-elect for Mandalay South-east-2

U Tin Htut, MP-elect for Einme-1

U Win Hlaing, MP-elect for Tatkon-2

U Saw Naing Naing, MP-elect for Pazundaung, Yangon

U Tin Aung Aung, MP-elect for Manalay North-west-1

Dr. Zaw Myint Aung, MP-elect for Amarapura-1

Dr. Myint Aung, MP-elect for Latha

Dr. Zaw Myint, MP-elect for Henzada-2

U Mya Win, MP-elect for Ingapu-1

U Hla Than, MP-elect for Coco Islands

U Tin Soe, MP-elect for Kyauktada

U Saw Win, MP-elect for Htilin

U Hla Tun, MP-elect for Kyimyindine, Yangon

U Khin Maung Swe (released on 1 May 1992, rearrested in August 1994)

U Sein Hla Oo (released on 1 May 1992; rearrested in August 1994)

"12. With regard to political leaders deprived of their liberty, the Special Rapporteur would appreciate the Government providing a copy of the list of persons in detention and of those released during the course of 1995, indicating which among these persons were/are active members of political parties and those who stood for the general elections of 1990.

"13. Allegedly because of the high level of intimidation discouraging open political activity, detention for public anti-government activities appears year after year to be less and less frequent. Nevertheless, the Special Rapporteur continues to receive allegations. For example, it has been alleged that on 20 February 1995, during a march celebrating the funeral of

former Prime Minister U Nu, around 50 young activists were arrested. Among the group, the Special Rapporteur has received the names of the following persons: Moe Kalayar Oo, Aye Aye Moe, Yi Yi Tun and Cho Nwe Oo (all four being female students); Maung Maung Oo (a male student who was allegedly badly beaten when he was arrested by the military intelligence agents); Maung Maung Win (also known as Mye-Latt); Moe Maung Maung; and Moe Myat Thu (who is reportedly a student aged 26 who was a close associate of Daw Aung San Suu Kyi). Moe Myat Thu was reportedly arrested on 20 July 1989 and spent three years in Insein Prison before being released on 27 April 1992. It is alleged that he was badly beaten when he was arrested by the military intelligence agents. According to several sources, the above-mentioned persons may have chanted slogans during the funeral, but did not engage in any violent activity.

"14. Reports from various sources continue to describe how an unknown number of civilians have been arrested as suspected insurgents (or sympathizers thereto) and how they remain detained in the countryside prisons, especially in the regions of the country with predominantly non-Burman population. On 20 March 1995, the following persons were allegedly arrested at Tachilek: Nang Han Ny from Murng Koo village; Ai Mon from Nuam Kham; I Yi, along with two other unidentified men and two unidentified women. In addition, information has been received concerning Ai Yi Long and Ai Long, who were reportedly arrested on 3 April 1995. It is reported that these persons are held at No. 24 Intelligence Camp near Ba Suk Village, where Battalion No. 331 of the State Law and Order Restoration Council's army is based. It is further reported that all those arrested were injured upon arrest. It is alleged that Ai Mon had one ear cut off in front of local people, that Ai Yi had his nose cut and that Nang Han Ny was beaten on the body. Ai Yi Lung and Ai Ling were said to be held at the local police station under suspicion of involvement with the Mong Tai Army. All those arrested are said to be civilians.

"15. The Special Rapporteur would appreciate the Government providing information regarding the detained persons described above, their places of detention, the formal charges lodged against them, the judicial guarantees accorded them before, during and after trial, the sentences received and whether these persons are allowed regular visits by their families and legal counsel. In addition, the Special Rapporteur would appreciate being informed of all steps taken by the Myanmar authorities to ensure the detained persons' rights to physical integrity.

"16. The Special Rapporteur welcomed with great satisfaction the announcement, made on 10 July 1995, that restrictions on Daw Aung San Suu Kyi had been lifted by the Government of Myanmar and that she had been released. Following this announcement, the Special Rapporteur addressed, on 11 July 1995, the following letter to the Minister for Foreign Affairs of the Union of Myanmar:

> 'I have the honour to address you in my capacity as Special Rapporteur on the situation of Human Rights in Myanmar, appointed by the Chairman of the Commission on Human Rights, pursuant to its resolution 1995/72.

'As Special Rapporteur, I welcome the announcement made by Myanmar authorities, on 10 July 1995, to release Daw Aung San Suu Kyi. In this connection, I trust that her release is without condition and will enable her fully to enjoy her liberty and personal freedom in accordance with international human rights standards.

'As Special Rapporteur, I believe that this decision will be very much welcomed and appreciated by the international community and could well form a basis for constructive dialogue and wider progress on the question of human rights in Myanmar. I also believe that the release of Daw Aung San Suu Kyi is a very positive and encouraging step towards national reconciliation and democratization in Myanmar.

'On this occasion, I would also like to express the hope that this recent decision will be followed in the near future by the unconditional release of all other persons who remain in detention on account of their opinions.'

"17. Since his appointment in 1992, the Special Rapporteur has followed very closely the case of Daw Aung San Suu Kyi. In this context, the Special Rapporteur has challenged the legal basis for the persistence of the limitations on her rights to freedom of movement, expression and other equally fundamental rights. At the same time, the Special Rapporteur has requested the Government of Myanmar to provide him with specific replies to his inquiries. However, he remains unconvinced by the Government's arguments in the responses provided. Therefore, in each of his reports and statements to the General Assembly and the Commission on Human Rights, he has recommended her release immediately and unconditionally. Prior to being informed about the announcement of her release, the Special Rapporteur addressed, on 10 July 1995, the following letter to the Minister for Foreign Affairs of Myanmar:

'I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Myanmar, appointed by the Chairman of the Commission on Human Rights, pursuant to its resolution 1995/72.

'In keeping with my commitment to endeavour to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, I would appreciate receiving your Government's response with regard to the ongoing detention of Daw Aung San Suu Kyi.

'In a letter dated 5 October 1994, I requested your Government to provide specific reasons, including reference to precise legal authority, for keeping Daw Aung San Suu Kyi under house arrest after 20 July 1994, and to indicate exactly when the Government intends to release her.

'In a note verbale dated 4 November 1994, your Government provided me with a detailed response concerning the specific legal

authority for keeping Daw Aung San Suu Kyi under house arrest after 20 July 1994. According to the Myanmar legislation, in the 1975 "Law to safeguard the State against the dangers of those desiring to cause subversive acts", as amended in August 1991, it is stipulated under section 10 (b) that a person may be restrained for up to one year. The same law further stipulates in sections 13 and 14 the possibility to continue restraint for "a period not exceeding one year at a time up to a total of five years".

'In the case of Daw Aung San Suu Kyi, your Government has previously reported that she was restrained in her liberty and effectively placed under house arrest on 20 July 1989 for an initial period of one year according to section 10 (b) of the above-mentioned law. According to section 14 of the said law, the restraints on Daw Aung San Suu Kyi were continued year by year for the maximum of five years as stipulated in the law.

'In the light of the above, I understand that there will be no legal basis under Myanmar legislation for restraining Daw Aung San Suu Kyi after 20 July 1995, assuming her restraint was "necessary" under section 13 of the above-mentioned Law. If she is not released after this date, her detention would evidently contravene applicable Myanmar law, irrespective of any application of the minimum international standards securing liberty of person, in particular those embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

'With due regard to my responsibilities, I appeal to your Government to ensure her release immediately and unconditionally. In my opinion, the release of Daw Aung San Suu Kyi would also be a positive and encouraging step towards national reconciliation and democratization in Myanmar.'

"18. The Special Rapporteur hopes that the decision to release Daw Aung San Suu Kyi will enable her to enjoy her liberty and personal freedom fully without any condition or restriction. In this connection, the Special Rapporteur would like to be informed if Daw Aung San Suu Kyi will be participating in the National Convention which, according to information received, will reconvene on 24 October 1995.

"19. The Special Rapporteur is concerned after the announcement made on 16 June 1995 by the International Committee of the Red Cross (ICRC) to withdraw from Myanmar because ICRC's standard requirements for visits to places of detention (i.e., that it meet prisoners in private, have access to all prisons and be assured of repeated visits) were rejected by the Myanmar authorities. The non-acceptance of ICRC's customary procedures for visits to places of detention followed by this well-recognized organization in all other countries where it conducts such activities is a negative step towards amelioration of conditions of detention in Myanmar, especially in so far as several reports allege ill treatment to be common in Myanmar's

places of detention. Several sources indicate that political prisoners are generally not given access to proper medical treatment and are sometimes held in solitary confinement. In this light, the Special Rapporteur would appreciate receiving an indication from the Government of Myanmar as to whether it is prepared to resume its dialogue with ICRC and to reach an agreement with regard to the standards applied by ICRC for visits to places of detention.

"C. Torture and cruel, inhuman or degrading treatment

"20. The Special Rapporteur has received numerous allegations, often in considerable detail and from different sources, describing civilians being subjected to torture or cruel, inhuman or degrading treatment by forces of the Myanmar military. The allegations include kickings and beatings with rifle butts or canes on the head and other parts of the body, causing head injuries, loss of teeth and/or broken bones. Other disturbing reported methods include submerging victims into water for long periods of time and pouring hot water over their bodies or into their noses. In some cases, victims alleged that they had suffered burns and the cutting of parts of their bodies (e.g., ears and tongue).

"21. According to reports received, torture and ill-treatment would seem to be a means for the Myanmar authorities to punish citizens who do not comply with their orders. It also seems to be a common method to extract confessions from civilians suspected of real or perceived anti-Government activities. The most vulnerable populations are detainees, village headmen (who are responsible to the authorities on behalf of their entire villages), porters in the course of their duties and civilians living in areas of insurgency. Women are said to be subjected to sexual abuses. It has also been reported that some victims of torture have to pay bribes to avoid such treatment.

"22. The following are some examples of the allegations received:

"(a) On 27 December 1994, Captain Htun Way from Battalion No. 376, Company 1, allegedly arrested a village headman in Plat Wa township, Chin state. According to the source, the headman was asked to provide information about persons having passed through his village. He was tied up when he could not give the information demanded. He was then repeatedly submerged into water and subsequently punched, beaten with a rifle butt and kicked. His nose and one rib were broken;

"(b) A former porter (aged 56) who served under Battalion No. 60 described how, on 8/9 February 1995, an officer from Battalion No. 48 allegedly poured hot water over a group of five porters at Baw Ser Ko for attempting to escape. According to the same source, another officer beat their legs 'like he was minced meat'. It was reported that the porters were also beaten around their waists and faces, and some of them, as a consequence, lost their teeth;

"(c) On 11 February 1995, two soldiers from Heavy Artillery No. 264, one of whom was an officer, allegedly put a jacket around a porter's neck and started pulling him along when he could not carry any more. He was beaten and kicked and had his walking stick broken over his back. He was abandoned on the road;

"(d) It was also reported that in the third week of December 1994, soldiers of Infantry Battalion No. 62 were ordered by their commander to torture a 50-year-old man in Hlainkhani village, Mon state, on suspicion of having let rebels stay on his land. He was repeatedly immersed in a water pool and beaten with rifle butts and combat boots;

"(e) On 1 January 1995, soldiers from Local Infantry Battalion No. 410 allegedly abducted a group of women of varying ages from Kaw Zar village, Mon state, and took them to Paukpinkwin village in order to rape them;

"(f) On 21 February 1995, soldiers of Infantry Battalion No. 62, under the command of Major Ohn Myint, reportedly entered Pee Setan village, Kayin state. A 52-year-old man was arrested and had his wrists tied behind his back. Soldiers kicked his head (causing head injuries) and chest and beat him with a stick. They then walked on him and rolled bamboo up and down his shins. His head was forced back, a thin piece of cloth was put on his face, whereafter water was poured into his nose. His wife was arrested when the soldiers took him back to his house. Her wrists were tied behind her back and soldiers walked on her legs. Her face was then covered with plastic and water was poured into her nose. The wife was later released, but the husband was taken to another village, where he was released the following day against a ransom;

"(g) On 23 March 1995, at 2 a.m., troops from Local Infantry Battalion No. 62 allegedly came to Kwankhabawe village, Mon state, and arrested one woman and two men, accusing them of supporting the Mon troops. Their heads were covered with plastic bags, and water was poured over them. The torture went on for about an hour, after which the three victims were tied up and brought to Htonemine village, where another two villagers were arrested and accused of having been in regular contact with the Mon troops. These two villagers were subjected to the same form of torture as those from Kwankhabawe, after which all of them were taken to Klortsot village, where they were detained and reportedly tortured for four days. The victims were released against ransoms of 25,000 Kyats each;

"(h) On 22 August 1994, soldiers from Local Infantry Battalion No. 408 reportedly arrested a 56-year-old man in Ah Lae Sa Khan village, Ye Phyu township, and accused him of having contacts with rebels and passing information to them. His ears were cut off, his nails were driven through his hands and legs and his tongue was cut out. The victim died when nails were driven through the crown of his head;

"(i) On 10 January 1995, at Manerplaw, Sergeant Toe Toe of Local Infantry Battalion No. 205 allegedly beat and cut with his bayonnet the flesh of the hands of a 24-year-old porter trying to protect his friend who was too weak to porter. The friend, an 18-year-old man, was then executed

by Sergeant Toe Toe, who stabbed him with a bayonnet after having tied his mouth with a cloth.

"23. The Special Rapporteur would appreciate the Government providing responses to the above allegations and indicating what steps have been undertaken to comply with the prohibition against these practices as encompassed by article 5 of the Universal Declaration of Human Rights, article 3 common to the four Geneva Conventions of 1949, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988), and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975). The Special Rapporteur would also appreciate being informed of any independent investigations that may have been carried out in regard to these allegations, whether any military or security personnel have been tried and sentenced, dismissed from duty or otherwise disciplined for their part in any established violation.

"D. Forced labour

"24. The Myanmar Government reportedly made extensive use of various forms of forced, unpaid labour for a variety of development projects aimed at building the infrastructure of the country. Various sources have reported an especially extensive use of forced labour in relation to several completed or ongoing railway construction projects. Railway lines under present construction are, reportedly: the Pakokku-Gangaw-Kalemyo-Tamu Line, the Pakokku-Myaing-Gangaw-Kalay line and the Ye-Tavoy line. People are allegedly not only forced to contribute their labour to these and other projects, but also to contribute materials. No compensation is said to be paid by the Government. For example, in Zin Kalee area, it was reported that people were asked to bring 24 tins of rice, 100-150 kyats in cash, pick-axes, mattocks and hoes. Some people had to obtain these tools by selling their clothing and other properties. It was further reported that civilian trucks were conscripted and never paid for, and all workers had to spend their own money for food and transportation. The labourers also had to combine their resources to pay for the rental of bulldozers. In addition, those who were assigned to night-shift duty had to rely on their own resources for electricity.

"25. The Myanmar Government has proclaimed 1996 as 'Visit Myanmar Year'. Although this could be viewed as a general sign of the opening up of the country, human rights concerns have been expressed. Many of the measures that the Government has taken to prepare the country for foreign tourists reportedly constitute violations of human rights. Forced labour has allegedly been used to restore some of the tourist sights (e.g., Mandalay Palace) and to upgrade the infrastructure (e.g., railways, roads and airports). For example, it is alleged that people working for 'The Mong Kwan Electric Power Plant' (which is being constructed approximately 10 miles south of Kengtung in Eastern Shan state) are expected to contribute as many as 60 days labour for the project throughout the year.

It is further reported that they are also expected to provide their own food.

"26. In connection with the recent conflicts between the Myanmar Army and insurgent groups in Karen state, several sources have reported an increase of forced portering for the military. The Army has reportedly rounded up porters of all ethnic and religious backgrounds from villages and towns as far south as Mon state. The porters are said to have been taken from the streets, trains, movie theatres and even from their homes. The reports on portering allege physical abuse, appalling living conditions and arbitrary killings of porters who are unable to perform their tasks. For example, a former farmer from Grit Kote village, Pauk Kong Township, Pegu division, who allegedly escaped from portering, described how he had been arrested together with 10 other people from the same village by Local Infantry Battalion No. 66 on his way back from a video show. According to his testimony, there were about 200 porters when they started moving from Thaton, including 15 women. When they reached Papun, they were ordered to carry food supplies (60 kilograms of rice rations), munitions and artillery shells.

"27. The Special Rapporteur would appreciate receiving the Government's response to the above allegations indicating what measures have been taken to comply with the obligations under International Labour Organization (ILO) Convention No. 29 prohibiting the practice of forced portering and other forced labour and what rights of redress are available to victims of such practices.

"E. Insurgent activities at the Thai/Myanmar border areas

"28. The Manerplaw area has long been a stronghold from where the Karen National Union (KNU) has conducted insurgent activities. Other opposition groups have reportedly also operated inside Myanmar from Manerplaw. In December 1994, the Myanmar Government reported that a breakaway faction of KNU had formed the Democratic Kayin Buddhist Organization (DKBO).

"29. Following the fall of Manerplaw and Kawmoora (both strongholds of KNU) in January and February 1995, several sources reported widespread human rights abuses, e.g., reprisals against civilians following insurgent ambushes, looting and forced relocations. As a result of the unrest in the areas, over 10,000 persons belonging to the Karen minority reportedly fled over the Thai/Myanmar border. Preoccupied by this situation, the Special Rapporteur addressed, on 30 January 1995, the following letter to the Minister for Foreign Affairs of Myanmar:

> 'I would like to draw your attention to the situation which is currently prevailing along the Thai/Myanmar border. According to several reliable sources, the Myanmar Government has launched a large-scale military offensive in the Kayeni area along large stretches of the Thai/Myanmar border. The sources claim that the offensive is directed at ethnic nationalities and student camps along the border, and that over 30,000 well-armed soldiers from the Myanmar Army are

taking part in the offensive. The civilian population in the area is said to be fleeing and seeking refuge across the border. The Myanmar Army is said to be positioned immediately across the river from the refugee village Htoo Wah Lu. Refugees also fear that they will not be allowed to enter Thailand to escape the hostilities.

'These reports appear to contradict the statements made by your government representatives in Myanmar during my previous visits. I have understood that your Government is committed to the policy of strengthening national unity and solidarity and therefore is pursuing a policy of national reconciliation which seeks to return to the legal fold all minority groups with which the Government is presently in conflict. As a first step towards national reconciliation, I have also understood that your Government is seeking to obtain peaceful settlements through negotiated cease-fires.

'Given the above, you will understand my preoccupation with these reported incidents which would seem to constitute serious human rights violations against civilians and, in particular, an ethnic minority.'

"30. At the time of the armed conflict in the Manerplaw area, between the Myanmar Army and Karen armed groups, the Special Rapporteur issued a press release (HR/954 of 7 February 1994) expressing his concern that 'the prevailing situation might give rise to serious human rights violations affecting both the local population and captured members of Karen armed groups'. The Special Rapporteur was also 'concerned that vulnerable civilians, in particular women and children and the sick and wounded, may have special humanitarian needs'. He called upon the Government 'to resolve peacefully its difficulties with ethnic minorities and to take all appropriate measures to ensure respect for human rights and humanitarian obligations in this region'.

"31. Since 19 April 1995, DKBO, apparently accompanied by the Myanmar Army, has reportedly launched several attacks on Karen refugee camps located in Thailand in order to force the refugees to return to Myanmar. Numerous refugees are said to have been killed, the material damage inflicted on the camps and also on nearby Thai villages is said to have been extensive and some refugees are reported to have been forcibly abducted to Myanmar. Several sources indicate that representatives of the Government of Myanmar regularly meet with DKBO leaders and that the Government has provided financial and military assistance to DKBO. The connection between the Myanmar Government and DKBO is not clear, but the Government reportedly admits to having assisted the Democratic Kayin Buddhist Army with logistical support. In this regard, the Special Rapporteur addressed the following letter on 29 May 1995 to the Minister for Foreign Affairs of Myanmar:

'In my capacity as Special Rapporteur, I would like to express my particular concern about the current situation along the Thai/Myanmar border. Since the fall of KNU bases at Manerplaw in January 1995 and following the split in KNU in December 1994, several reliable sources have reported that DKBO has committed widespread human rights abuses,

e.g., reprisals against civilians following insurgent ambushes, looting and forced relocations. As a result, over 10,000 persons belonging to the Karen minority have reportedly fled over the Thai border. Some refugees are reported to have been forcibly abducted back to Myanmar.

'In a letter dated 13 February 1995 from the Permanent Representative of Myanmar to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights, your Government acknowledges that the Tatmadaw provided necessary logistical support to DKBO.

'With due regard to my responsibilities, I appeal to your Government to use all the necessary means to ensure that DKBO ceases its attacks on refugees in Thailand and its reprisals against civilians in Myanmar, and that individuals abducted from refugee camps in Thailand are released. I also call upon your Government to protect and guarantee security and safety for the civilians who are returning either voluntarily or forcibly from Thailand to their country and also to investigate, prosecute and punish agents responsible for such violations.

'I look forward to receiving your Government's comments on these matters at its earliest convenience.'

"32. On 13 June 1995, the Minister for Foreign Affairs of Myanmar addressed the following letter to the Special Rapporteur:

'On behalf of the Minister for Foreign Affairs of Myanmar, I have the honour to refer to your letter of 29 May 1995, addressed to the Minister for Foreign Affairs of Myanmar, expressing your concern about the current situation along the Thai/Myanmar border.

'In this connection, I should like to respond to your letter and to apprise you of the true situation and recent events that have occurred in some of the so-called KNU refugee camps in Thailand, and in certain border areas of Kayin state of the Union of Myanmar.

'As you are fully aware, the discontent of those within KNU who wanted to live in peace and see the development of their region led to the formation of DKBO towards the end of 1994. When KNU forces still loyal to Bo Mya launched a massive offensive against DKBO, during which hundreds of people including civilians were killed, the local inhabitants requested assistance from the Myanmar Armed Forces.

'In connection with DKBO's sincere and genuine desire for peace and stability of the region, which falls in line with the objectives of the Government, the Myanmar Armed Forces provided necessary logistic support while DKBO launched its assault on KNU camps and units of the Armed Forces secured the rear with the aim of protecting nearby villages from attacks by KNU remnants.

'Since the fall of KNU camps along the border to DKBO forces, peace and security have been restored in these areas and Kayin nationals who were living in the "refugee" camps of KNU in Thailand are returning to Myanmar, in spite of attempts by KNU to hinder their return. The people in the camps are family members, relatives and sympathizers of KNU, DKBO and a few other armed groups. As of today, more than 10,000 persons have returned to Myanmar and more are expected to return.

'The people who have returned to Myanmar are given a warm welcome by officials and the local populace, and are settled systematically in their villages. All necessary assistance, such as shelter, food, clothing and medical care, are being provided to them. The main village, Kamamoung, is being upgraded to a township village level and Myaing-Gyi-ngu is being rebuilt as a model village. Amenities such as housing, police station, hospital and health clinics and primary schools are being developed. Steps are also being taken to alleviate poverty, such as help to the villagers in land cultivation and agriculture. Most importantly, the security of the returnees has been protected and consolidated by the authorities.

'Armed clashes have broken out at times between the forces of KNU and DKBO entering the camps, and preventing DKBO from taking relatives and families back to Myanmar peacefully.

'As the Government has not yet held any official peace talks with DKBO, and as DKBO still has yet to return to the legal fold, the Myanmar authorities have no control over DKBO, and are not responsible for their activities. The incidents that have occurred recently at the KNU "refugee" camps and in certain areas of Kayin state arise from conflicts between the Kayin armed groups. The Government of Myanmar does not play any part in these matters.

'The Government of Myanmar cannot and should not be held responsible for the alleged human rights violations that occur beyond the control and jurisdiction of the Myanmar authorities and that are allegedly perpetrated by individuals belonging to an armed group over which it has no control.

'As such, the Government of Myanmar is unable to comprehend your concern about the current situation along the Thai/Myanmar border.'

"33. The Special Rapporteur would appreciate receiving from the Government indications about the situation currently prevailing along the Myanmar/Thai border, whether the Government of Myanmar has signed a peace agreement with DKBO and what is the status of peace talks between the State Law and Order Restoration Council (SLORC) and KNU. In pursuance of its policy to continue to extend its peace offer to those groups who join the legal fold, the Special Rapporteur would appreciate knowing if the New Mon State Party will be participating in the National Convention now that it has agreed to a cease-fire with SLORC.

"F. The situation of women

"34. The Special Rapporteur addressed the question of violations of the rights of women in his reports of 17 February 1993 (E/CN.4/1993/37, paras. 77, 78, 95 and 96), 16 February 1994 (E/CN.4/1994/57, para. 49) and 28 October 1994 (A/49/594, para. 9 (14)).

"35. Traditionally, women in Myanmar appear to have enjoyed equal rights with men. This tradition enables women to participate equally in the development of the economy. Employment opportunities for women are said to be good, and it is reported that 40 per cent of the total labour force in Myanmar consists of women.

"36. With regard to human rights violations, it appears that women are generally treated less harshly than men. Some of the allegations received indicate, however, that women are not spared from torture, ill-treatment, arbitrary detention, summary execution, portering or other forced labour.

"37. The Special Rapporteur has continued to receive information from various sources describing sexual or sex-related violations committed by representatives of the authorities against women. These include the undressing of women in public, touching breasts or sucking nipples, raping and gang-raping women individually or in groups. The rape of women serving in forced labour camps or as porters is said to be common. Some of the allegations received indicate that soldiers view rape as a right, and that sometimes it is encouraged by officers. It has also been alleged that women are sometimes singled out for portering or other forced labour in order to be raped. No consideration is reportedly being shown to the victim's marital status or condition of pregnancy. Soldiers are said to prefer young, unmarried girls. Some examples of allegations received are as follows:

"(a) In the evening of 25 September 1994, members of a joint military column of Local Infantry Battalion Nos. 206 and 208, under the command of Nyi Nyi Aung, were said to have intimidated a woman in Mi Ka Tit village, Kayin state, and ordered her to strip off her sarong and to uncover the lower part of her body;

"(b) On 1 January 1995, troops from Local Infantry Battalion No. 410 allegedly entered Ta Yoke Taung village, Ye township, and raped five women, one of whom was pregnant at the time;

"(c) In October 1994, the SLORC local council of Pong Kyun quarter, Tavoy, allegedly ordered a woman who was six months pregnant to contribute labour at the Zim Bar construction site in lieu of her sick husband. She was apparently assigned to dig an earthen pit. Other pregnant women were allegedly also contributing labour to the construction site, and some suffered miscarriages as a result. The women at the site were aged between 15 and 65 years.

"38. The Special Rapporteur would appreciate receiving a description of any investigations into these allegations undertaken by the Government, and

information as to whether any military personnel have been tried and sentenced, dismissed from duty or otherwise sanctioned for their part in any verified violations. The Special Rapporteur would further appreciate knowing whether the Government of Myanmar intends to become a party to the Convention on the Elimination of All Forms of Discrimination against Women."

IV. RESPONSE OF THE GOVERNMENT OF MYANMAR TO THE MEMORANDUM OF THE SPECIAL RAPPORTEUR

13. By a note verbale dated 4 October 1995, the Permanent Mission of Myanmar to the United Nations Office at Geneva transmitted the responses of the Government of Myanmar to the summary of allegations received by the Special Rapporteur.

14. The following is the full text of the Government of Myanmar's response to the summary of allegations received by the Special Rapporteur:

"Observations and rebuttals on the summary of allegations

"A. Allegations of summary or arbitrary execution

"C. Allegations of torture and cruel, inhuman or degrading treatment

"1. No instances of summary or arbitrary execution can be permitted in Myanmar and no provision is made in the law for such.

"2. Torture and other cruel, inhuman or degrading treatment are also illegal in Myanmar.

"3. Under section 330 of the Penal Code, whoever voluntarily causes hurt for the purpose of extorting confession shall be punished with imprisonment for a term which may extend to seven years and shall be liable to fine. Under section 24 of the Evidence Act, a confession made by an accused person is irrelevant in a criminal proceeding, if the making of confession appears to the court to have been caused by any inducement, threat or reward.

"4. Under section 43 of the Police Act, whoever tortures any detainee is liable to both imprisonment and fine. Under the Myanmar Police Manual, police officers of all ranks are rigorously required not to do anything that might tarnish the image of the police force, even by the slightest show of harshness or violence in the treatment of persons in custody. The maltreatment of defenceless persons will lead to the dismissal of the guilty police officer.

"5. Members of the Armed Forces have to observe strictly not only the Defence Services Act and the Defence Services Rules, but also the Civil and Criminal Procedures. A member of the Armed Forces who breaks the law is punished both by the military and civil courts. According to the Defence

Services Act, murder and rape are crimes for which the maximum sentence of the death penalty can be meted out.

"6. It is therefore clear that torture and other cruel, inhuman or degrading treatment are prohibited by the relevant laws in Myanmar.

"7. In Myanmar, legal action is always taken and punishment meted out to those who are proved guilty of committing any crime. This also applies to members of the Security Forces. As in any country there exist some cases of members of the Armed Forces who break the law and legal action has been taken against them. In this regard, specific cases in which action was taken against those members of the Armed Forces who violated the law in various instances have been provided to the Special Rapporteur by the Government of Myanmar to help dispel misconception and false allegations that no action is taken against members of the Armed Forces who break the law.

"8. With regard to the examples of allegations contained in sections A and C of the summary of allegations, no reports from the civil or military have been received and no information about the alleged incidences has been received from the local populace. They are unfounded allegations originating from sources outside the country bearing ulterior political motives.

"B. Allegations of arbitrary arrest and detention

"9. In Myanmar, a person cannot be arrested and detained if it is not in accordance with the law. It is provided in section 61 of the Code of Criminal Procedure that no police officer shall detain in custody a person for a period exceeding 24 hours. Where it is necessary to detain such an accused for more than 24 hours, a special order of a magistrate has to be obtained under section 167 of the Code of Criminal Procedure. The arrested person has the right of defence and the right to have legal defence counsel. Moreover, the arrested or detained person has the right to apply freely for bail to the magistrate concerned and the court may grant him bail according to the merits of the case.

"10. Provision is made under section 40 of the Prisons Act for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers.

"11. Provisions such as section 330 of the Penal Code, section 24 of the Evidence Act and section 4[illegible] of the Police Act are enacted to protect a person under detention from torture and inhuman treatment.

[Reference: paragraph 10]

"12. U Tun Shwe, U Thu Wai and U Htwe Myint were charged under section 5(j) of the Emergency Provisions Act for collecting and distributing anti-government seditious pamphlets, and were sentenced to seven years' imprisonment on 3 July 1995 after due process of law. Action was taken against these individuals not because of their contacts with resident foreigners as alleged, but because they transgressed existing laws.

[Reference: paragraph 11]

"13. Legal action has been taken against certain representatives-elect for their infringement of the existing laws of the country. Information with regard to the cases of 15 individuals mentioned in the summary of allegations is provided as follows:

"(a) U Ohn Kyaing (Mandalay South-east-2)

"Sentenced to seven years' imprisonment on 17 October 1990 for sending a letter defying the authority of the Government;

"Sentenced to 10 years' imprisonment on 15 May 1991 for co-authorship of a seditious paper entitled 'Three Ways to Attain Power';

"(b) U Tin Htut (Einme-1)

"Sentenced to seven years' imprisonment on 15 May 1991 for co-authorship of a seditious paper entitled 'Three Ways to Attain Power';

"(c) U Win Hlaing (Tatkon-2), U Naing Naing (Pazundaung), U Mya Win (Ingapu-1) and U Hla Tun (Kyimyindine)

"Sentenced to 10 years' imprisonment on 30 April 1991 for their involvement in organizing a meeting for setting up an illegal parallel Government;

"(d) U Tin Aung Aung (Mandalay North-west-1), U Zaw Myint Aung (Amarapura-1), U Zaw Myint (Henzada-2) and U Hla Than (Cocos Islands)

"Sentenced to 25 years' imprisonment on 30 April 1991 for their involvement in organizing a meeting for setting up an illegal parallel Government;

"(e) Dr. Myint Aung (Latha)

"No person by the name of Dr. Myint Aung has been detained;

"(f) U Tin Soe (Kyauktada)

"Sentenced to two years' imprisonment and was fined 300 kyats on 25 August 1993 for criminal trespass into U Khin Maung Htay's

premises at No. 107, Myanma Gon Ye Street, Mingala Taung Nyunt Township in October 1992. In the course of a squabble between them over the sale of an apartment, U Tin Soe used abusive language and took photographs without the latter's express consent. U Khin Maung Htay reported the incident to the Mingala Taung Nyunt Police Station, whereby U Tin Soe was charged by the police under sections 447, 294 and 506 with criminal trespass. The court found him guilty of the charge;

"Released from detention on 9 March 1995 upon completion of his sentence;

"(g) U San Win (Htilin)

"Sentenced to 11 years' imprisonment on 23 August 1991 for misappropriation of teakwood which was to be supplied to the Thanlyin bridge project;

"(h) U Khin Maung Swe and U Sein Hla Oo

"Sentenced to seven years' imprisonment on 6 October 1994 for their collaboration with Dr. Khin Zaw Win in writing and distributing false news that would jeopardize the security of the State.

[Reference: paragraph 13]

"14. With regard to the allegation that 50 young activists were arrested at the funeral of former Prime Minister U Nu, only 9 persons, namely Aung Zeya, Tin Than Oo, Nyunt Myaing, Moe Maung Maung, Maung Maung Oo, Moe Myat Thu, Moe Kalayar Oo, Cho Nwe Oo and Aye Aye Moe, were taken into custody. Action is being taken against them under section 5(j) of the 1950 Emergency Provisions Act for having created disturbances at the funeral with the aim of disrupting it and for having instigated the people to unrest. Yi Yi Tun and Maung Maung Win were not detained as alleged.

"15. There should exist no anxiety or fear of torture or ill treatment in detention as such practices are strictly prohibited in the Prison Manual and the Police Act, and the authorities concerned scrupulously follow the regulations laid down.

[Reference: paragraph 19]

"16. The health of the prisoners serving sentences is taken care of by prison medical officers. When emergency and serious illnesses arise, arrangements are made for the patients to receive the necessary treatment at general or specialized hospitals. As such, allegations that certain prisoners are generally not given access to proper medical treatment is totally untrue.

"17. With regard to visits by ICRC to places of detention in Myanmar, negotiations have taken place with a view to signing, at an appropriate

time, a memorandum of understanding between the Government of Myanmar and ICRC. The Myanmar side has already intimated to ICRC its readiness to continue ongoing dialogue in this regard. ICRC maintains its regular contacts and cooperation with the Government and the Myanmar Red Cross Society through its regional office at New Delhi.

"18. As a party to the Geneva Conventions and as a nation respecting and adhering to the principles and objectives of the Red Cross Movement, Myanmar will continue to cooperate with ICRC in the future.

"D. Allegations of forced labour

"19. Since Myanmar regained independence in 1948, various armed groups have been engaged in armed conflict against successive Governments. Basing themselves in remote and relatively inaccessible areas, these armed groups have terrorized and endangered the lives of ordinary citizens of the nation. In order to protect the lives and property of the civilians, and in order to maintain peace and security, the Armed Forces of Myanmar have had to launch military operations against the armed groups. Since the terrain inhabited by the armed groups is mountainous and thickly forested, many places are not accessible to motorized vehicles and the Armed Forcers have had to recruit civilian labourers. The use of labourers in Myanmar has been practised since the time of colonial rule, during which time laws in connection with this were promulgated by the colonial rulers. Following independence, successive Governments have continued this practice according to the law.

"20. Recruitment and employment of civilian labourers are in accordance with the Village Act of 1908 and the Towns Act of 1907, and is based on the following three criteria:

"(a) They must be unemployed;

"(b) They must be physically fit;

"(c) They must be paid a reasonable amount of wages, fixed and agreed upon beforehand.

"21. The labourers must be paid from the time they leave their respective homes until they return, on completion of their duty. Apart from daily wages, they are entitled to receive rail and steamer travelling warrants or cash to cover the actual cost of transport between their homes and the operation area. The respective military unit has the responsibility of providing accommodation, messing and medical cover for the recruited labourers. Daily wages must be commensurate with those prevailing in the area. They are never required to accompany the troops to the actual scene of battle, nor are they exposed to danger. In the unlikely event of loss of life or limb, they or their families are compensated in accordance with the Workmen's Compensation Act of 1923.

"22. In order to overcome the problem of having to recruit civilian labourers by the Armed Forces, amongst other reasons, the Government of Myanmar has been inviting armed groups to return to the legal fold, as part of the national reconciliation effort undertaken by the Government. As a result, 15 of the 16 armed groups have done so, and the problem of having to use recruited civilian labourers no longer exists in the areas where these armed groups once operated.

"23. The areas once inhabited by the armed groups that have returned to the legal fold now enjoy peace and can look forward to being part of the development activities that are taking place in other parts of the country. The Ministry for Progress of Border Areas and National Races and Development Affairs has been able to lay down and to implement programmes for the development of border areas and national races. To alleviate the socio-economic conditions of the people in the whole country, infrastructures for economic and social development in various sectors, such as transportation, agriculture, forestry, livestock breeding, energy, water supply, education and health are being developed and upgraded. Nowhere is this more needed than in the border areas where development in all fields has lagged behind owing to the presence of the armed groups.

"24. It has always been a tradition in Myanmar culture to donate labour in the building of pagodas, monasteries, roads and bridges and in the digging and clearing of wells, ponds, dams and canals. A belief exists that doing so leads to mental and physical well-being. Those who can afford to donate money do so while those who cannot, donate their labour. This is all part of community work that raises the standard of living, both materially and spiritually. As such, the local populace, members of the local military units, government servants, as well as members of the armed groups who have returned to the legal fold, participate enthusiastically and conscientiously. United Nations agencies, foreign and local non-governmental organizations are also involved in these projects. The local populace is already enjoying the benefits of their own endeavours.

"25. For their contribution towards community development, remuneration is given to the workers either on a piece-rate basis, or at prevailing wage rates. In some cases, the authorities disburse a lump sum of money to be used for the benefit of the whole community.

"26. As examples, the following references can be made to the various railroad projects of how much money the Government has spent for contributed labour. The following amounts of money have been paid out by the Government to the local villagers for their contribution of labour:

"(a) Tada U-Myaingthar sector: 1.4 million kyats;

"(b) Aungban-Pinlaung sector: K10 million for the villagers and K2,843,000 for the compensation of land taken up by the rail line;

"(c) Pinlaung-Loikaw sector: K10 million for the villagers and K912,000 for the compensation of land and houses taken up by the rail line;

"(d) Chaung U-MagyeeBoke sector and Pakokku-Minywa sector: K8.29 million;

"(e) Pakokku-Gangaw-Kalay sector: K30 million;

"(f) Shwenyaung-Namsan sector: K10.38 million;

"(g) Ye-Dawai sector: K12.46 million.

"27. A medical doctor was assigned to each of the sections by the Myanmar Railways during the construction of rail lines and the Chief Medical Officer toured the area regularly in order to provide health care for the local populace. In cases of injuries arising from the construction works, compensation is paid by the Myanmar Railways to the persons concerned.

"28. The development projects undertaken by the Government are solely for the benefit of the people of the region. It is the people who live in the area and who have contributed labour who directly enjoy the fruits of their endeavours.

"29. It would of course be ideal if the Government did not have to depend upon the labour contribution of the local populace in order to complete the projects in their respective areas. Lacking sufficient financial resources to complete independently projects that would bring development and progress to areas that would otherwise remain undeveloped, the Government has had to rely on the means available in order to improve the lives of the people. The Government does pay for contributed labour as far as its financial resources permit, and in accordance with prevailing local rates. If the Government did not try to raise the standard of living of the people with the means at its disposal, the people would remain victims of the circumstances in which they would otherwise be bound forever, unable to raise their standard of living.

"30. There are other projects taking place in Myanmar besides those pertaining to the improvement of infrastructure. Construction of hotels, business and commercial centres, and development of holiday resorts constitute some of the projects taken on as joint ventures, with either local or foreign companies. Work is undertaken by private construction companies who hire and employ workers of their choice. These companies operate within the bounds of a market economy and have to pay the workers competitively. As for the renovation of monuments of importance to Myanmar's cultural heritage, the work is so specialized that only highly skilled workers can be used. These workers command premium rates. Thus, allegations that forced labour is used in projects that promote tourism and international trade have no basis of truth.

"31. The ILO Committee of Experts has taken note of the conclusions and recommendations made by the Tripartite Committee set up by the Governing Body to examine the representation made by the International Confederation of Free Trade Unions (ICFTU), alleging non-observance by Myanmar of the Forced Labour Convention No. 29. The Committee of Experts has accordingly expressed the hope, with regard to public works projects as well as

regarding porterage services, that the powers vested in the authorities under the Village Act and the Towns Act will be repealed.

"32. The two laws in question, administered by the General Administration Department of the Ministry of Home Affairs, are among the list of laws that were first reviewed on 29 January 1995, and again on 16 May 1995, by a Board comprising the Deputy Minister for Labour as the Chairman, and with representatives from the Prime Minister's Office, the Ministry of Foreign Affairs, the Attorney-General's Office and the General Administration Department as its members.

"33. The Board found that the two laws were no longer in conformity with the prevailing conditions in the country, besides not being in line with the provisions of Convention No. 29. This finding is in agreement with the conclusion drawn by the Tripartite Committee set up by the Governing Body of ILO.

"34. Consequently, the Government of Myanmar, in compliance with the request from the Governing Body, 'to ensure that the relevant legislative texts, in particular, the Village Act and the Towns Act, are brought in line with the Convention and to ensure that formal repeal of powers to impose compulsory labour be followed up in practice and that those resorting to coercion in the recruitment of labour be punished', has started the process of amending those two laws.

"35. This development was presented to the Committee on the Application of Standards at the eighty-second session of the International Labour Conference by a member of the Myanmar delegation.

"E. Insurgent activities at the Thai/Myanmar border areas

"36. The true situation and recent events that have occurred in some KNU refugee camps in Thailand and in certain border areas of Kayin state in Myanmar has been conveyed to the Special Rapporteur by the Minister for Foreign Affairs of Myanmar in letter No. 252/3-27/29 of 13 June 1995 of the Permanent Mission of Myanmar, an extract of which appeared in section E of the summary of allegations.

"37. The Government has not yet held any official peace talks with DKBO, and as DKBO has yet to return to the legal fold, the Myanmar authorities have no control over DKBO and are not responsible for its activities. The presence of government security forces along some sections of the eastern border are for the prevention of spill-over effects, and to provide security for local inhabitants who have requested such security assurances, as various factions of the Kayin armed groups continue to be in conflict with each other.

"38. The Government of Myanmar, in the spirit of national reconsolidation, continues to extend its peace offer to the remaining few to return to the legal fold and to work together with the people and the Government in building a peaceful and modern State.

"F. The situation of women

"39. According to Myanmar customs and traditional culture, as well as under State constitutions adopted during consecutive eras, Myanmar women have always had equal rights with men. Existing laws of the country guarantee that all citizens, irrespective of race, religion, status, culture, place of birth or gender, are equal before the law.

"40. Moreover, specific provisions are made in some of the laws in order to protect women and children, and the following four laws in particular ensure the protection of the rights of women in Myanmar:

"(a) The Myanmar Buddhist Women's Special Marriage and Succession Act (1954);

"(b) The Suppression of Prostitution Act (1949);

"(c) The Myanmar Maternal and Child Welfare Association Law;

"(d) The Nursing and Maternity Law.

"41. Provisions are also included in the Penal Code to protect women against rape, illicit intercourse, torture, causing miscarriage without one's consent, seduction and enticement.

"42. There are also certain laws which have specific provisions for women labourers. There are provisions relating to the protection of modesty, prevention of hazards to life and accidents and the rights of women during confinement. Protection is given to all women prisoners.

"43. Women in Myanmar are not only protected by such laws and provisions, they are also protected by Myanmar traditions and customs, as well as customary law, religious beliefs and practices. Women's rights constitute human rights and Myanmar women fully enjoy fundamental rights.

"44. Myanmar people are well known for their culture, tolerance and compassion. In Myanmar society, men and women have a symbiotic relationship, mutually depending upon one another. They believe that they have equal and shared responsibilities towards the family and society. The men have a deep respect for women.

"45. The members of the Myanmar Armed Forces are but the sons and daughters of Myanmar nationals. They emerged from this society in which they were born and brought up. How can anyone from this society commit such outrageous crimes that were mentioned in the summary of allegations? Neither will such acts be knowingly condoned by persons in responsible positions.

"46. It is clear that these allegations are unfounded, emanating from anti-government sources and terrorist groups, with the aim of discrediting the Government as well as the Armed Forces of Myanmar. In the unlikely event that there is any truth in these allegations, it can only be repeated that unless and until the alleged victims bring their cases to the notice of the authorities concerned, nothing can be done to redress what they claim to have suffered."